

81921-1  
NO. 81940-8

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**THE SUPREME COURT  
STATE OF WASHINGTON**

STATE OF WASHINGTON, PETITIONER,

v.

RACHEL MARIE VINCENT, RESPONDENT

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Appeal from the Superior Court of Pierce County  
The Honorable Kitty-Ann van Doorninck

No. 07-1-3846-1

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**STATEMENT OF GROUNDS FOR DIRECT REVIEW**

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GERALD A. HORNE  
Prosecuting Attorney

By  
MELODY M. CRICK  
Deputy Prosecuting Attorney  
WSB # 35453

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STATE OF WASHINGTON  
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A. NATURE OF THE CASE AND DECISION.

On January 4, 2007, Pierce County Sheriff's Deputy McNicol and Deputy Oleason pulled over Howard Seaworth for having expired vehicle tabs. (Appendix A). The officers ran a records check on Seaworth, which revealed the existence of a no contact order prohibiting Rachel Marie Vincent, hereinafter "defendant," from having contact with Mr. Seaworth. *Id.* The description of the restrained party, defendant, matched that of the passenger in Seaworth's car. *Id.* When defendant offered proof of her valid license in order to prevent the car from getting towed, Deputy McNicol noticed that the name and date of birth matched those of the restrained person on the no contact order. *Id.* Deputy McNicol verified the existence of the no contact order prohibiting defendant from having any contact with Mr. Seaworth, and arrested defendant. *Id.* Defendant admitted that she knew about the no contact order, and in fact had been arrested for violating it only a few days prior. *Id.*

Defendant agreed to a stipulated facts trial. *Id.* Defendant stipulated to the authenticity and admissibility of the No-Contact Order, that she had signed the No-Contact Order, and that the relevant contact occurred in Pierce County. *Id.* Defendant, however, brought a *Knapstad*<sup>1</sup>

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<sup>1</sup> *State v. Knapstad*, 107 Wn.2d 346, 729 P.2d 48 (1986).

motion to dismiss the charges against her, arguing that her conduct did not warrant criminal charges under the statute. (Appendix B). The Honorable Judy Rae Jasprica denied defendant's motion. (Appendix B). Defendant was found guilty. (Appendix C). Defendant appealed to the Superior Court. (Appendix D).

On July 11, 2008, the Superior Court, under cause number 07-1-03846-1, remanded the case back to the trial court for the dismissal of defendant's conviction based on the decision of the Court of Appeals, Division II, in *State v. Hogan*, \_\_ Wn. App. \_\_, \_\_ P.3d \_\_ (2008), 2008 Wash. App. LEXIS 1436. The court found that defendant's act, as charged under RCW 26.50.110(1), was not one for which an arrest was required and as such, found that the ruling in *Hogan* was controlling. (Appendix E). The State filed a timely notice of discretionary review. (Appendix F).

The State of Washington now seeks direct discretionary review of the decision of the Superior Court of Pierce County, in *State v. Vincent*, cause number 07-1-03846-1, ordering the trial court to reverse its finding of guilt and dismiss defendant's charge of violation of a no contact order under former RCW 26.50.110(1).

B. ISSUE PRESENTED FOR REVIEW.

1. When the Superior Court entered an order concerning former RCW 26.50.110(1) consistent with rulings in the Court of Appeals, Division II, but in direct conflict with a ruling in the Court of Appeals, Division I, should this court grant review?

C. GROUND FOR DIRECT REVIEW.

1. AS THERE ARE CONFLICTING DECISIONS AS TO THE CRIMINALIZATION OF ACTS UNDER FORMER RCW 26.50.110(1), THIS COURT SHOULD RESOLVE THE CONFLICT.

The criteria for granting direct review of a Superior Court decision are set forth in RAP 4.2. RAP 4.2(a)(3) provides that a party may seek direct review when there is “a case involving an issue in which there is a conflict among decisions of the Court of Appeals.” This court should accept review in this case because the criterion has been met.

Two different divisions of the Court of Appeals have reviewed former RCW 26.50.110(1). The former version of RCW 26.50.110(1), which was in effect at the time of the instant case, read as follows:

Whenever an order is granted under this chapter, chapter 7.90, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or there is a valid foreign protection order as defined in RCW 26.52.020, and the respondent or person to be restrained knows of the order, a violation of the restraint provisions, or of a provision excluding the person from a residence, workplace, school, or day care, or of a provision prohibiting

a person from knowingly coming within, or knowingly remaining within, a specified distance of a location, or of a provision of a foreign protection order specifically indicating that a violation will be a crime, for which an arrest is required under RCW 10.31.100(2) (a) or (b), is a gross misdemeanor except as provided in subsections (4) and (5) of this section

Former RCW 26.50.110(1).

The argument was made that former RCW 26.50.110(1) only criminalized violations “for which an arrest is required under RCW 10.31.100(2)(a) or (2)(b). The decisions in two divisions of the Court of Appeals are in direct conflict over this issue.

In *State v. Bunker*, 144 Wn. App. 407, \_\_ P.3d \_\_ (2008)<sup>2</sup>, the Court of Appeals, Division I, looked at the legislative intent to determine if a defendant charged under former RCW 26.50.110(1) had committed a crime. The court found the statute to be ambiguous as to what section the phrase “for which an arrest is required under RCW 10.31.100(2)(a) or (2)(b)” was intended to modify, and so turned to legislative intent. *Id.* at 415. The court took into account the 2007 legislative amendment, as well as the plain language of the statute when put into context with related statutes. *Id.* at 420. The court ruled:

The legislature has amended RCW 26.50.110 explicitly to clarify that the construction of the statute that Bunker and

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<sup>2</sup> A petition for review with the Supreme Court was filed in *State v. Bunker*, Supreme Court No. 81921. The petition is set to be considered on February 3, 2009.

Williams seek is incorrect. That amendment applies retroactively to Bunker and Williams because it was for the sole purpose of removing a statutory ambiguity and changed no substantive law. Even had the legislature not amended RCW 26.50.110, however, Bunker's and Williams's construction of RCW 26.50.110 is itself implausible when RCW 26.50.110(1) is read in conjunction with related sections, as it must be. Accordingly, we conclude that Bunker's and Williams's conduct was criminal

*Id.* at 420.

Conversely, in *State v. Hogan*, \_\_ Wn. App. \_\_, \_\_ P.3d \_\_ (2008), 2008 Wash. App. LEXIS 1436, the Court of Appeals Division II, found that former RCW 26.50.110(1) was not ambiguous. The court relied on the corollary to the last antecedent rule in reference to the comma placed immediately before the phrase "for which an arrest is required..." *Id.* The court found that the statute was not ambiguous as written, and so did not turn to legislative history or intent. *Id.* Rather, the court found that the plain language was clear and since the defendant did not commit any acts or threats of violence and did not violate prohibitions from contacting the protected party at specific locations, the defendant had not committed a crime. *Id.* The court also noted that it was making its decision consistent with its own decision in *State v. Madrid*, \_\_ Wn. App. \_\_, \_\_ P.3d \_\_ (2008), 2008 Wash. App. LEXIS 1432, but in direct opposition to the decision by Division I in *State v. Bunker*. *Id.* (footnote 4).

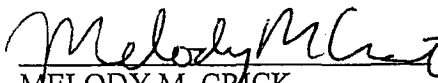


D. CONCLUSION.

Whether a violation of a protection order constitutes a crime under former RCW 26.50.110(1) is unsettled. The provisions are not being enforced uniformly as defendants in one division are prosecuted and defendants in another division cannot be prosecuted. As there are conflicting decisions between two divisions of the Court of Appeals, this court should grant direct review to resolve the conflict.

DATED: AUGUST 21, 2008.

GERALD A. HORNE  
Pierce County  
Prosecuting Attorney

  
MELODY M. CRICK  
Deputy Prosecuting Attorney  
WSB # 35453

Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

  
Date | Signature

## **APPENDIX “A”**

*Agreed Stipulation of Facts Trial*

DISTRICT COURT PIERCE COUNTY, WASHINGTON

I, [Signature] do hereby certify that  
this document is a full, true and correct copy of the original  
document on file in the above entitled court.

Certified on Aug 21, 2008



IN THE DISTRICT COURT 1 OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

CASE NO. 7YC010030

v.

**PARTIES' AGREED STIPULATION  
TO FACTS AT TRIAL**

RACHEL MARIE VINCENT,

Defendant.

This matter, having coming before the Honorable Judge Judy Rae Jasprica on this 18<sup>th</sup>  
day of July, 2007, the defendant having previously waived her right to a jury trial, the parties set  
forth the following agreed upon facts for stipulation and determination of disposition by the  
Court in the above matter:

I. That on January 4, 2007, Pierce County Sheriff's deputies McNicol and Oleason  
initiated a traffic stop of driver Howard Seaworth for expired vehicle tabs.

II. That upon contacting Seaworth, Seaworth reported that his driving status was  
suspended; Deputy McNicol confirmed the suspension through LESA records.

III. That a records check of Seaworth also revealed the existence of a No Contact  
Order, prohibiting the defendant Rachel Marie Vincent (hereinafter "the defendant") from having  
contact with Seaworth.

PARTIES' AGREED STIPULATION TO FACTS  
AT TRIAL - 1

Office of the Prosecuting Attorney  
930 Tacoma Avenue South, Room 946  
Tacoma, Washington 98402-2171  
Main Office: (253) 798-7400

1 IV. That the records check also listed a description of the defendant, which Deputy  
2 McNicol recognized as matching the person seated in the passenger seat.

3 V. That to prevent Seaworth's car from being towed, the defendant offered proof of  
4 her valid license to Deputy McNicol; Deputy McNicol immediately recognized the defendant's  
5 name and date of birth as matching the restrained person's.

6 VI. That Deputy McNicol verified the existence of the No Contact Order and arrested  
7 the defendant.

8 VII. That the defendant was read her Miranda warnings and voluntarily agreed to  
9 speak with Deputy McNicol regarding the incident.

10 VIII. That the defendant subsequently told Deputy McNicol that she knew about the No  
11 Contact Order and had been arrested only days prior for violating it.

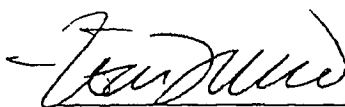
12 IV. That the defendant stipulates to the authenticity and admissibility of the No  
13 Contact Order, Pierce County Superior Court Cause No. 06-1-03213-8 (Plaintiff's Exhibit 1).

14 V. That the No Contact Order bears the defendant's signature.

15 VI. That the relevant contact occurred in Pierce County, Washington.

16  
17  
18 Dated this 18<sup>th</sup> day of July, 2007.

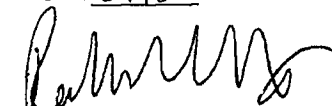
19 By:

20 

21 HEATHER L WELCH  
22 Deputy Prosecuting Attorney  
23 WSB# 37229

24 

25 ATTORNEY FOR DEFENDANT  
WSB# 34950



RACHEL M VINCENT  
Defendant

DISTRICT COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 7YC010030

vs.

RACHEL MARIE VINCENT,

STATEMENT OF DEFENDANT ON  
SUBMITTAL OR STIPULATION TO  
FACTS

Defendant.

I am the defendant in this case. I wish to submit the case on the record. I understand that this means that the Judge will read the police report and other materials and, based upon that evidence, the Judge will decide if I am guilty of the crime(s) of violation of a  
No Contact Order - Post Sentence (DV) - 1 Count.

I understand that, by this process, I am giving up the constitutional right to a jury trial, the right to hear and question witnesses, the right to call witnesses in my own behalf, and the right to testify or not to testify.

I understand that the maximum sentence for the crime(s) is 365 days in jail  
and/or a \$5000 fine  
and that the Judge can impose any sentence up to the maximum, no matter what the prosecution or the defense recommends.

The mandatory minimum sentence for the crime(s) is ineligibility to possess  
a firearm.

No one has made any threats or promises to get me to submit this case on the record other than the prosecuting authority's promise to take the following action and/or make the following recommendations: 365/364 WC, 10FA, \$850, formal PO, DVE+FU, DVP,  
LTB/NGI, FNCO w/ HOWARD SEAWORTH

DATED this 18<sup>th</sup> day of July, 2007.

[Signature]  
Deputy Prosecuting Attorney 37229

[Signature]  
Defendant

[Signature]  
Attorney for Defendant

Office of Prosecuting Attorney  
930 Tacoma Avenue South, Room 109  
Tacoma, Washington 98402-2171  
Telephone: (253) 798-7446

## **APPENDIX “B”**

*Order Denying Defendant's Motion*

DISTRICT COURT PIERCE COUNTY, WASHINGTON

I, Stwa do hereby certify that  
this document is a full, true and correct copy of the original  
document on file in the above entitled court.

Certified on Aug 21, 2008  
IN THE DISTRICT COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF PIERCE



STATE OF WASHINGTON, )  
 )  
 Plaintiff, )  
 )  
 v )  
 )  
 RACHEL VINCENT, )  
 )  
 Defendant. )

CAUSE NO 7YC010030

ORDER DENYING DEFENSE  
MOTION

Although couched in terms of a Knapstad Motion, the issue before this court addresses the intent of the legislature as it relates to violations of No Contact Orders, Protection Orders and Restraining Orders and changes made to the statutory scheme in 2000.

In 2000, RCW 26.50.110(1) was changed to read:

Whenever an order is granted under this chapter, Chapter 10.99 . . . and the respondent knows of the order, a violation of the restraint provisions, or of provisions prohibiting a person from knowingly coming within, or knowingly remaining within, a specified distance of a location, or of a provisions of a foreign protection order specifically indicating that a violation will be a crime, for which an arrest is required under RCW 10.31.100(2) (a) or (b) is a gross misdemeanor except as provided in subsections (4) and (5) of this section.

The defense argues that this language excludes from criminal prosecution any violation of a NCO that is not covered in RCW 10.31.100 (2). RCW 10.31.100(2) is an enabling statute, allowing police officers to make an arrest without a warrant in certain circumstances. However, this argument relies solely on the placement of a comma in RCW 26.50.110. Thus leaving the statute subject to a strained reading that would only criminalize those violations for which RCW 10.31.100 (2) authorizes arrest without a warrant. That interpretation is in conflict with all other provisions of the statute.

#### Legislative History

A review of both the Senate Bill Report and the House Bill Report indicate the intent was to make the punishment for violations of No Contact Orders, Protection Orders and Restraining Orders in dissolution actions (hereinafter collectively "NCO") all the same and to include language that authorizes and criminalizes going within a specific distance from a victim's residence or other location. That bill made all violations of NCOs punishable pursuant to RCW 26.50.110. The House Bill Report includes language that "this bill is a collaborative effort that will strengthen domestic violence laws."

The original proposed bill, SB6400, prior to the amendments from the Striker Bill, read in pertinent part:

Whenever an order is granted under this chapter, Chapter 10.99. . . and the respondent or person to be restrained knows of the order, a violation of the restraint provisions, or of a provision excluding the person from a residence, workplace, school, or day care, or a provision prohibiting a person from coming within a specified distance of a location of another person, is a gross misdemeanor except as provided . . .



The Senate Bill Report for E2SSB 6400 lists the amendments to the original bill. No where in the list of amendments is a statement that the legislative intent is to decriminalize specific violations of NCOs. The Striker version, later adopted as the final bill, added the language about foreign protection orders and the last phrase which is what the defense is relying on to argue that violations other than those listed in RCW 10.31.100(1) are not criminal violations.

The defense reading of this statute ignores other statutes, all of which were addressed in E2SSB 6400. The legislature did not delete language requiring that all NCOs include language advising the defendant that violation of the NCO is a criminal offense under 26.50 RCW and will subject a violator to arrest.

The defense identifies this ambiguity and attempts to resolve it by arguing that the legislature **should have** changed that language to read: "and **may** subject a violator to arrest." However, that language was left unchanged in RCW 10.99.050, 10.99.040, 74.34, 26.09.060, 26.10.040, 26.10.115, 26.26.130, 26.26.137, 26.44.067. Since the stated intent of the legislature was to treat the violations of ALL NCOs the same, it does not follow that only those issued in criminal proceedings would not subject the person to criminal prosecution.

The Background for this bill (as stated in the Senate Bill Report) indicates that "[T]he proponents of this bill believe penalties for violating the restraining provisions of various types of orders should flow from the conduct violating the order rather than the type of order."

Further, RCW 10.99.055 was never changed. That statute directs law enforcement to enforce orders restricting a defendant's ability to have contact with a victim by arresting and taking defendant into custody, pending release on bail, when the officer has probable cause to believe that the defendant has violated the terms of that order.

In the summary of the bill it is noted that "[V]iolations of restraining provisions of court orders related to domestic violence issued in all types of proceedings where authorized triggers arrest when a police officer has probable cause to believe an order was issued, the person restraining had knowledge of the order, and a violation has occurred.

This ambiguity created by the legislature requires a further look at the intent of the legislature. No where (except for some testimony against the bill, and even its context is unclear) is there any support for the argument that the legislature intended to de-criminalize certain violations of NCOs. [Defense relies on testimony against the bill by law enforcement, and a notation that the issue was clarified in the Striker Bill.] A thorough review of the changes made in the Striker Bill indicate that the changes noted were changes which removed

restrictions that would keep an individual a certain distance from another person. That change was made throughout E2SSB 6400. This is also indicated in the House Amendments of the Senate Bill Report which indicates "[T]he language which would have restrained a person from coming within a specified distance of another person (known as the moving bubble) is removed." No where is there any discussion that changes were made to only criminalize offenses referred to in RCW 10.31.100(2), as the defense would have the court believe.

### Statutory Interpretation

In construing statutes, RCW 1.12.010 provides that, "provisions of this code shall be liberally construed, and shall not be limited by any rule of strict construction. My reading of RCW 26.50.110 indicates that to consider the placement of the comma before the words "for which an arrest is required under RCW 10.31.100(2) . . ." is a strained reading of the statute which does not support the legislative intent. Had that comma been removed, then this motion would not have been before the court. The intent of the legislature should not attempt to be gleaned from this misplaced comma and ignore all the other statutory changes which support a different intent.

Further, 73 AmJur 2d, Statutes, Sec. 61, states:

In the interpretation of statutes, the legislative will is the all important or controlling factor. Indeed, it is sometimes stated in effect that the intention of the legislature constitutes the law. Accordingly, the primary rule of construction of statutes is to ascertain and declare the intention of the legislature, and to carry such intention into effect to the fullest degree. Thus, a construction adopted should not be such as to nullify, destroy, or defeat the intention of the legislature.

### Conclusion

The stated intent of the legislature was to strengthen the domestic violence laws, not weaken them. The stated intent of the legislature was to treat violations of all NCOs the same, not limit what is a criminal violation. To give any other meaning to RCW 26.50.110 is to completely ignore the intent of the legislature.

The stated legislative intent was to make the penalty for violations of all NCOs the same; not to allow different penalties for the conducts, based on the type of order. To support this stated legislative intent, RCW 26.50.110 must be read to say that when a NCO is granted and the Respondent knows of the order, and a violation of the restraint provisions occur, that violation is a gross misdemeanor.

When this issue was first presented to me, I denied the defense motion and ruled that it was my firm belief that it was not the legislative intent to exclude certain types of violations from criminal prosecutions. Since that ruling, I have been provided a copy of a ruling from Judge Gerald Knight, Snohomish County Superior Court (which holds no precedential value to this court). I also was provided and reviewed the original of Senate Bill 6400, Senate Bill Report, House Bill Report, House Striker Bill, and SB 6400 passed by the legislature. A review of those documents does nothing to change my mind that it was not the legislative intent to make the sweeping changes that the defense argues, and dilute the domestic violence laws.

Had the legislature intended for certain violations of those orders to not be criminal offenses, the legislature would have also changed the numerous references to violations of the order as being a criminal offense and subjecting the violator to arrest.

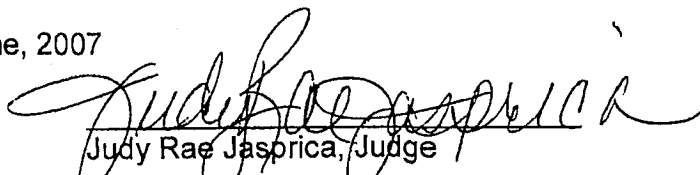
Further, RCW 10.99.055 was never changed directing law enforcement to enforce orders restricting a defendant's ability to have contact with a victim by arresting and taking the defendant into custody, pending release on bail, when the officer has probable cause to believe that the defendant has violated the terms of that order. The legislature's change of one statute without the change of many others leaves in place the validity of arresting individuals who have violated restraining orders. In addition the legislature left in place the requirement that NCOs inform the restrained party that violations of the order, with notice of it terms subjects the protected party to criminal charges. No change was made to include language excluding some type of behavior as only being contemptible, and not criminal.

Thus, any claim by the defendant of lack of knowledge or prejudice cannot withstand scrutiny since the restrained party is advised at the time the order is entered, that violation of the order, any violation, is subject to criminal charges.

Finally, the court is aided in determining legislative intent by the recent adoption of changes to RCW 26.50.110. The legislature unanimously passed SHB 1642, to "make clear its intent that willful violation of a no-contact provision of a court order is a criminal offense and shall be enforced accordingly to preserve the integrity and intent of the domestic violence act." It must be noted that the court is only relying on that legislation in determining intent, not applying that newly adopted legislation to the cases at bar.

Thus, defendant's motion to dismiss is denied.

DATED this 22<sup>nd</sup> day of June, 2007

  
Judy Rae Jasprica, Judge

## **APPENDIX “C”**

*Court Order Finding Defendant Guilty*

# COURT ORDER

TAPE #	<u>Witch</u>
DPA	<u>Vasiliades-DAC</u>
ATTY	<input type="checkbox"/> AoR <input type="checkbox"/> Standby <input type="checkbox"/> Appointed
INT	

DEFENDANT <u>Vincent, Rachel</u>	AKA							
ADDRESS	BIRTHDATE	In Custody <input type="checkbox"/>						
CITY, STATE, ZIP	TELEPHONE NUMBER	Probable cause YES <input type="checkbox"/> NO <input type="checkbox"/>						
CASE NO.	CHARGE SECTION	BAIL	AMENDED TO	Dispo	JAIL TIME	JAIL SUSP	CRIMINAL JUSTICE SERVICES	FEES COSTS
1. <u>74C010030</u>	<u>No order via</u>			<u>G</u>	<u>365</u>	<u>364</u>		<u>850.</u>
2.								
3.								
4.								
5.								
6.								
7.								

do hereby certify that  
is a full, true and correct copy of the original  
on file in the above entitled court.

on Aug 21, 2008 Jail Time ☐ Consecutive ☐ Concurrent

☐ PUBLIC DEFENDER REFERRAL. ☐ Defendant to be screened in custody. ☐ Defendant to report to Pre-Trial Services  
☐ today ☐ upon release from custody for screening for a public defender. **See Back Page.**

## BAIL/APPEAL BOND

- ☐ Bail fixed at \$ \_\_\_\_\_ (Cash only/Cash or bond).  
☒ Bail Bond reinstated/exonerated.  
☐ Cash bail refunded to poster; retain \$ \_\_\_\_\_ as \_\_\_\_\_.  
☐ Appeal Bond \$ \_\_\_\_\_ (Cash/Bond).

## JAIL

- ☐ Defendant released NOW.  
☐ Defendant released for work crew.  
☐ Defendant released on PR.  
☒ Defendant released to EHM staff only.

## FINE/COSTS

- ☒ You must pay Fine/Cost of \$ 850. by stayed - pending appeal. **See Back Page.**  
☐ You must complete \_\_\_\_\_ days on the work crew in lieu of \$ \_\_\_\_\_. Report to Probation Department. **See Back Page.**  
☐ You must complete \_\_\_\_\_ hours of community service in lieu of \$ \_\_\_\_\_ to be completed not later than \_\_\_\_\_. Report to Probation Department. **See Back Page.**  
☐ Emergency Response costs payable to \_\_\_\_\_ in the amount of \$ \_\_\_\_\_.

## CONFINEMENT

- ☐ JAIL: YOU MUST REPORT TO PIERCE COUNTY JAIL on \_\_\_\_\_ at \_\_\_\_\_. **See Back Page.**  
☐ ALTERNATIVE DETOX FACILITY: You must serve \_\_\_\_\_ days of your sentence at an alternative detox facility. If you have not filed proof of completion with the court by the date set to report to jail, you must report to jail on that date. **See Back Page.**  
☒ WORK CREW: You must complete \_\_\_\_\_ days in lieu of jail time. Report to Probation Department. **See Back Page.**  
☐ DAY REPORTING: You must complete \_\_\_\_\_ days in lieu of jail time. Report to Probation Department. **See Back Page.**  
\_\_\_\_\_. To include Day Reporting Relicensing Program.  
☐ ELECTRONIC HOME MONITORING: You must serve \_\_\_\_\_ days of your sentence on Electronic Home Monitoring ☐ with REACT. ☐ You are directed to be on pre-trial EHM ☐ with REACT. Report to EHM office ☐ today ☐ upon release.  
☐ Defendant to be screened in custody. EHM monitored by ☐ BI ☐ other \_\_\_\_\_. **See Back Page.**  
☐ Electronic Home Monitoring to be removed today.  
☐ COMMUNITY SERVICE: You must complete \_\_\_\_\_ hours of community service in lieu of jail time. Court finds there is jail overcrowding. Report to Probation Department. **See Back Page.**  
☐ ALTERNATE JAIL LOCATION: Defendant is authorized to serve the jail time at \_\_\_\_\_. Proof of admission/completion to be filed by \_\_\_\_\_ or report to Pierce County Jail as set forth above. **See Back Page.**

## DISPOSITION/FINDINGS

- ☐ A finding of Guilt was entered and sentence was set over.  
☐ A finding of Guilt was entered and sentence was deferred until \_\_\_\_\_. Upon compliance with conditions:  
☐ Vacate/Dismiss. ☐ Amend to \_\_\_\_\_. Upon non-compliance, return for sentencing.  
☐ This case was continued without a finding until \_\_\_\_\_. Upon compliance, ☐ Dismiss ☐ Amend to \_\_\_\_\_. Upon non-compliance, return for reading of the record and sentencing.  
☐ A Deferred Prosecution was entered. Defendant must comply with all conditions of treatment agency and the court.  
☐ The Court finds the Defendant's criminal history and driving record are as attached.

Initials

Date

7-1807

DRIVER'S LICENSE

- ☐ Your driver's license or privilege to drive is suspended effective \_\_\_\_\_, See Back Page.  
License invalidated ☐ Yes ☐ No

PROBATION

- ☐ You are on court supervision until \_\_\_\_\_. You are responsible for filing proof with the court that you have complied with the conditions set forth below. See Back Page.
- ☒ You are on formal supervision until 7-18-09. You must report to the Probation Department ☒ Today ☐ Within 24 hours of release from jail. See Back Page.
- ☐ Probation to see Defendant in jail.
- ☐ Formal supervision terminated \_\_\_\_\_.
- ☐ You are being re-referred to the Probation Department to monitor original/modified conditions of sentence. See Back Page.
- ☐ You are being referred to the Probation Department for a Pre-Sentence investigation. See Back Page.
- ☐ The court retains jurisdiction until \_\_\_\_\_.

cc:  
Prob

CONDITIONS OF SENTENCE: YOU MUST COMPLY WITH THE FOLLOWING CONDITIONS OF SENTENCE.

- ☒ 1. Have Law abiding behavior and no criminal violations of law or subsequent deferred prosecutions.
- ☐ 2. Do not drive a motor vehicle without a valid license and proof of insurance or financial responsibility.
- ☐ 3. You are not to drive a motor vehicle with an alcohol concentration in your system in excess of .00.
- ☐ 4. Complete an alcohol/drug assessment and provide written proof of findings by \_\_\_\_\_.
- ☐ 5. Comply with recommended treatment from alcohol/drug assessment. ALCOHOL/DRUG INFORMATION SCHOOL (AIS) is the minimum requirement to comply with the condition. Monthly/Quarterly reports of compliance with treatment must be filed if treatment is required. Proof of completion of AIS must be filed by \_\_\_\_\_.
- ☐ 6. Attend DUI Victims Panel presentation and provide written proof of completion by \_\_\_\_\_.
- ☐ 7. Complete an Anger Management Assessment and provide written proof of finding by \_\_\_\_\_.
- ☒ 8. Complete a Domestic Violence/Batterer's Assessment and provide written proof of finding by 8-18-07.
- ☒ 9. Comply with recommended treatment from DV assessment. Monthly/Quarterly reports of compliance with treatment must be filed if treatment is required.
- ☒ 10. Attend DV Victims Panel presentation and provide written proof of completion by 10-18-07.
- ☐ 11. Consume no alcohol or other mood altering drug not prescribed by your doctor.
- ☐ 12. Submit to a blood/breath/urine test if ordered by the court or probation.
- ☐ 13. Attend \_\_\_\_\_ self-help meetings, such as AA or NA, per week and provide proof at next court appearance.
- ☐ 14. Pay restitution (payment for damages). Report to Probation Department. See Back Page.
- ☐ 15. Have ignition interlock installed on vehicle for ☐ 6 months ☐ 1 year ☐ 5 years ☐ \_\_\_\_\_. To be installed ☐ within \_\_\_\_\_ ☐ upon reinstatement of driving privileges. See Back Page.
- ☐ 16. Attend Defensive Driving School and provide written proof of completion by \_\_\_\_\_.
- ☐ 17. Attend Consumer Awareness Program and provide written proof of completion by \_\_\_\_\_.
- ☐ 18. Attend Liquor Control Board class on identification and provide written proof of completion by \_\_\_\_\_.
- ☒ 19. Have no hostile contact with Seaworth, Howard William
- ☒ 20. Abide by all written no contact/protection orders.
- ☒ 21. OTHER: STATE Exhibit #1 Marked

NEXT SCHEDULED COURT APPEARANCE: YOU MUST RETURN TO COURT on \_\_\_\_\_

at \_\_\_\_\_ for \_\_\_\_\_ Judge/Room \_\_\_\_\_.

I have read the above order and the Back Pages. I understand I must do exactly what is ordered. I understand my failure to do so will result in a warrant being issued for my arrest and additional confinement and/or costs will be imposed.

I agree to notify the court of any change of address within 10 days of such change.

[Signature]  
Defendant

DONE IN OPEN COURT: 7-18-07

[Signature]  
Judge/Commissioner/ProTem

74C 010030

READ BACK PAGES!

## **APPENDIX “D”**

*Notice of Appeal to Supreme Court*

DISTRICT COURT PIERCE COUNTY, WASHINGTON

I, [Signature] do hereby certify that  
this document is a full, true and correct copy of the original  
document on file in the above entitled court.

Certified on Aug 21, 2008

PIERCE COUNTY DISTRICT COURT NO. ONE  
PIERCE COUNTY, WASHINGTON

07-1-03846-1

STATE OF WASHINGTON,

Plaintiff,

vs.

RACHEL MARIE VINCENT,

Defendant.

NO. 7YC010030

NOTICE OF APPEAL TO SUPERIOR  
COURT AND CERTIFICATION OF FILING  
STATUS IN COUNTY CLERK'S OFFICE

A.M. JUL 23 2007 P.M.

PIERCE COUNTY, WASHINGTON  
KEVIN STOCK, County Clerk  
BY [Signature] DEPUTY

1. Appellant, RACHEL VINCENT seeks Superior Court review of the Pierce County District Court No. One decision dated 6/22/07 and 7/18/07 on the above case.
2. Defendant requests the following decision be reviewed (RALJ 2.6(a)): June 22, 2007 Order denying defense motion and July 18, 2007 finding of guilty
3. Within 14 days the appellant shall file with the Clerk of Pierce County District Court No. One and serve on all other parties a designation of the part of the record that needs to be transmitted to the Superior Court. Clerk of Pierce County District Court No. One shall prepare the record within 14 days after the designation is filed and shall notify each party that the record is ready to transmit and the amount to be paid by each party. Appellant shall pay the \$40.00 cost of preparing the record to the Clerk of the District Court No. One within 10 days of notification by the Clerk that the record is ready unless payment is waived by District Court (RALJ 6.2 (a)).
4. Appellant shall transcribe the tape recording of proceedings in accordance with RALJ 6.3A, and shall file the transcript of the record with the Superior Court Clerk.

NOTICE OF APPEAL TO SUPERIOR COURT  
AND CERTIFICATION OF FILING STATUS - 1

Department of Assigned Counsel  
949 Market Street, Suite 334  
Tacoma, Washington 98402-3696  
Telephone: (253) 798-6062



5. The appeal is designated as (Check one of the following):

☒ A criminal appeal for which no filing fee is required (RCW 10.10.060)

Violation of a No Contact Order - DV  
(Charges / Description)

☐ A civil, infraction, parking or contempt appeal for which a filing fee must be paid before the Notice of Appeal will be accepted for filing (RALJ 2.4(b)).

☐ A civil, infraction or parking appeal for which an In Forma Pauperis Petition has been granted and filing fee is waived.(RCW 36.18.022)

Dated: \_\_\_\_\_

Clerk: \_\_\_\_\_

Rachel Vincent  
19011 Pac Ave S #9  
Spanaway WA 98387  
Name and Address of Defendant

Elizabeth Vasiliades  
ELIZABETH VASILIADES, WSB# 34950  
Attorney for Appellant / Defendant  
Department of Assigned Counsel  
949 Market Street, Ste 334  
Tacoma, WA 98402

I, \_\_\_\_\_, a person over 18 years of age, served

a true copy of the document to which this certification is affixed, on:  
Service was made by delivery to \_\_\_\_\_ (ABC Legal Messenger Inc.); \_\_\_\_\_ (DAC Staff  
Person Delivery); \_\_\_\_\_  
(Depositing in the mails of the United States of America, properly stamped and addressed).

Signature  
Department of Assigned Counsel  
949 Market Street, Suite 334  
Tacoma, WA 98403

NOTICE OF APPEAL TO SUPERIOR COURT  
AND CERTIFICATION OF FILING STATUS - 2

Department of Assigned Counsel  
949 Market Street, Suite 334  
Tacoma, Washington 98402-3696  
Telephone: (253) 798-6062

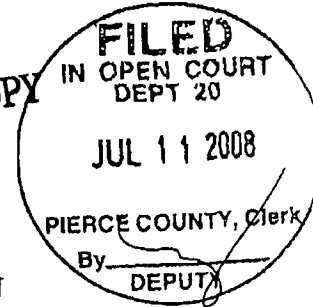
## **APPENDIX “E”**

*Order on RALJ Appeal Remand*



07-1-03846-1 30124042 ORRMO 07-14-08

CERTIFIED COPY



IN THE SUPERIOR COURT  
OF THE STATE OF WASHINGTON  
IN AND FOR PIERCE COUNTY

STATE OF WASHINGTON

Respondent,

v.

RACHEL MARIE VINCENT

Appellant.

NO. 07-1-03846-1

ORDER ON RALJ APPEAL REMAND  
DC# CAUSE # 7YC010030CLERK'S ACTION REQUIRED

THIS MATTER having come on regularly before the undersigned Judge of the above-entitled Court as an appeal from District Court No. 7YC010030, on a VERDICT of guilty of one count of VIOLATION OF A NO CONTACT ORDER, RCW 26.50.110(1), in the above-entitled cause, and the Court being fully advised in the premises, now, therefore,

It is hereby ORDERED, ADJUDGED and DECREED:

1. The finding of guilt ☐ by the trial court ☐ by jury trial is ☐ affirmed ☒ denied, and this cause is remanded for

☐ imposition of sentence ☒ dismissal of the charge.

2. The reason for this Court's rulings is.

The Court of Appeals, Division II issued an opinion in *State v. Hogan*, COA case number 35534-5-II. The court ruled that RCW 26.50.110(1) only criminalized violations "for which an arrest is required under RCW 10.31.100(2)(a)." Defendant's act in this case, like

ORDER ON RALJ APPEAL  
Vincent Remand Order.doc  
Page 1

Office of Prosecuting Attorney  
930 Tacoma Avenue South, Room 946  
Tacoma, Washington 98402-2171  
Main Office: (253) 798-7400  
Prosecuting Attorney  
930 Tacoma Avenue S, Room 946  
Tacoma, Washington 98402-2171  
Telephone: (253) 798-7400

the act in *Hogan*, was not an act where an arrest was required. As such, the court found that Hogan's act did not constitute a crime. Based on the court's ruling, defendant's act in the instant case would not constitute a crime.

3. The conviction is reversed and the case is remanded back to the trial court for dismissal.

DONE IN OPEN COURT this 11<sup>th</sup> day of July, 2008

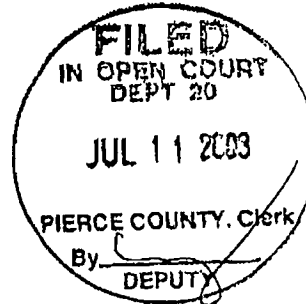
JUDGE

Kitty-Ann van Doorninck

Presented by:  
GERALD A. HORNE  
Pierce County  
Prosecuting Attorney

Melody M. Crick  
MELODY M. CRICK  
Deputy Prosecuting Attorney  
WSB # 35453

Steven P. Johnson Jr.  
STEVEN P. JOHNSON JR.  
Rule 9 Intern  
ID# 9106982



Telephonically Approved  
DEFENDANT/DEFENSE ATTORNEY  
WSB# 29374

STATE OF WASHINGTON, County of Pierce  
ss: I, Kevin Stock, Clerk of the above  
entitled Court, do hereby certify that this  
foregoing instrument is a true and correct  
copy of the original now on file in my office.  
IN WITNESS WHEREOF, I hereunto set my  
hand and the Seal of said Court this

21 day of July, 2008  
Kevin Stock, Clerk  
By [Signature] Deputy

## **APPENDIX “F”**

*Notice and Amended Notice for Discretionary Review*



07-1-03846-1 30194628 NTORCA 07-23-08

**CERTIFIED COPY** FILED  
PIERCE COUNTY CLERK'S OFFICE

A.M. JUL 23 2008 P.M.

PIERCE COUNTY, WASHINGTON  
KEVIN STOCK, County Clerk  
BY                      DEPUTY

IN THE SUPERIOR COURT  
OF THE STATE OF WASHINGTON  
IN AND FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

v.

RACHEL VINCENT,

Defendant.

NO. 07-1-03846-1

NOTICE FOR DISCRETIONARY  
REVIEW TO COURT OF APPEALS  
DIVISION II

TO: David C. Ponzoha, Clerk, Division II, Court of Appeals, 950 Broadway  
Street, Suite 300, Tacoma, WA 98402;

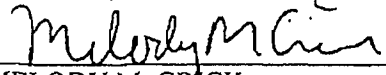
AND TO: RACHEL VINCENT, Defendant, and his attorney, JENNIFER APITZ

Plaintiff, State of Washington, seeks review by the designated appellate court of the  
Order On RALJ Appeal Remand in the above referenced matter entered orally and in  
writing on 7/11/08 by the Honorable Judge Kitty-Ann van Doorninck.

A copy of the decision is attached to this notice.

DATED: July 23, 2008.

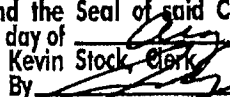
GERALD A. HORNE  
Pierce County  
Prosecuting Attorney

  
MELODY M. CRICK  
Deputy Prosecuting Attorney  
WSB # 35453

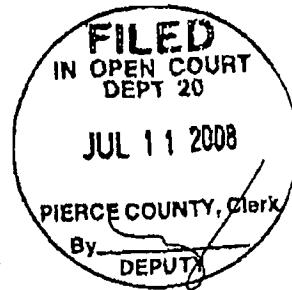
Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his or her attorney or to the attorney of record for the respondent and respondent c/o his or her attorney of record true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

7-23-08   
Date Signature

STATE OF WASHINGTON, County of Pierce  
ss: I, Kevin Stock, Clerk of the above  
entitled Court, do hereby certify that this  
foregoing instrument is a true and correct  
copy of the original now on file in my office.  
IN WITNESS WHEREOF, I hereunto set my  
hand and the Seal of said Court this  
21 day of July, 2008  
Kevin Stock, Clerk  
By  Deputy

CERTIFIED COPY



IN THE SUPERIOR COURT  
OF THE STATE OF WASHINGTON  
IN AND FOR PIERCE COUNTY

STATE OF WASHINGTON

Respondent,

v.

RACHEL MARIE VINCENT

Appellant.

NO. 07-1-03846-1

ORDER ON RALJ APPEAL REMAND  
DCH# CAUSE # 7YC010030

CLERK'S ACTION REQUIRED

THIS MATTER having come on regularly before the undersigned Judge of the above-entitled Court as an appeal from District Court No. 7YC010030, on a VERDICT of guilty of one count of VIOLATION OF A NO CONTACT ORDER, RCW 26.50.110(1), in the above-entitled cause, and the Court being fully advised in the premises, now, therefore,

It is hereby ORDERED, ADJUDGED and DECREED:

1. The finding of guilt [ ] by the trial court [ ] by jury trial is [ ] affirmed [x] denied, and this cause is remanded for

[ ] imposition of sentence [x] dismissal of the charge.

2. The reason for this Court's rulings is.

The Court of Appeals, Division II issued an opinion in *State v. Hogan*, COA case number 35534-5-II. The court ruled that RCW 26.50.110(1) only criminalized violations "for which an arrest is required under RCW 10.31.100(2)(a)." Defendant's act in this case, like

ORDER ON RALJ APPEAL  
Vincent Remand Order.doc  
Page 1

Office of Prosecuting Attorney  
930 Tacoma Avenue South, Room 946  
Tacoma, Washington 98402-2171  
Main Office: (253) 798-7800  
Prosecuting Attorney  
930 Tacoma Avenue S. Room 946  
Tacoma, Washington 98402-2171  
Telephone: (253) 798-7400



the act in *Hogan*, was not an act where an arrest was required. As such, the court found that Hogan's act did not constitute a crime. Based on the court's ruling, defendant's act in the instant case would not constitute a crime.

3. The conviction is reversed and the case is remanded back to the trial court for dismissal.

DONE IN OPEN COURT this 11<sup>th</sup> day of July, 2008

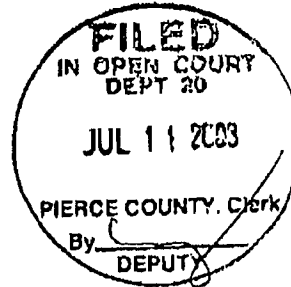
JUDGE

Kitty-Ann van Doorninck

Presented by:  
GERALD A. HORNE  
Pierce County  
Prosecuting Attorney

Melody M. Crick  
MELODY M. CRICK  
Deputy Prosecuting Attorney  
WSB # 35453

Steven P. Johnson Jr.  
STEVEN P. JOHNSON JR.  
Rule 9 Intern  
ID# 9106982



Telephonically approved  
DEFENDANT/DEFENSE ATTORNEY  
WSB# 29374

STATE OF WASHINGTON, County of Pierce  
ss: I, Kevin Stock, Clerk of the above  
entitled Court, do hereby certify that this  
foregoing instrument is a true and correct  
copy of the original now on file in my office.  
IN WITNESS WHEREOF, I hereunto set my  
hand and the Seal of said Court this  
21 day of July, 2008  
Kevin Stock, Clerk  
By [Signature] Deputy



07-1-03846-1 30305953 NTDRSC 08-11-08

FILED  
IN COUNTY CLERK'S OFFICE

CERTIFIED COPY

A.M. AUG -7 2008 P.M.  
PIERCE COUNTY, WASHINGTON  
KEVIN STOCK, County Clerk  
BY \_\_\_\_\_ DEPUTYIN THE SUPERIOR COURT  
OF THE STATE OF WASHINGTON  
IN AND FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

NO. 07-1-03846-1

v.

RACHEL VINCENT,

AMENDED NOTICE FOR  
DISCRETIONARY REVIEW TO  
SUPREME COURT

Defendant.

TO: Ronald R. Carpenter, Clerk of the Supreme Court, Temple of Justice, P.O.  
Box 40929, Olympia, WA 98504-0929;

AND TO: RACHEL VINCENT, Defendant, and his attorney, JENNIFER APITZ.

Plaintiff, State of Washington, seeks review by the designated appellate court of the  
Order On RALJ Appeal Remand in the above referenced matter entered orally and in  
writing on 7/11/08 by the Honorable Kitty-Ann van Doorninck.

A copy of the decision is attached to this notice.

DATED: August 7, 2008.

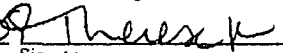
GERALD A. HORNE  
Pierce County  
Prosecuting Attorney

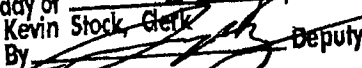


MELODY CRICK  
Deputy Prosecuting Attorney  
WSB # 35453

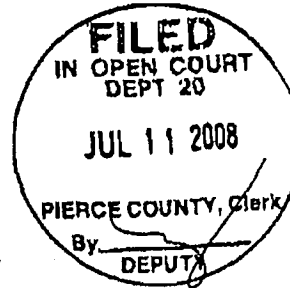
Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his or her attorney or to the attorney of record for the respondent and respondent c/o his or her attorney of record true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

8.7.08   
Date Signature

STATE OF WASHINGTON, County of Pierce  
ss: I, Kevin Stock, Clerk of the above  
entitled Court, do hereby certify that this  
foregoing instrument is a true and correct  
copy of the original now on file in my office.  
IN WITNESS WHEREOF, I hereunto set my  
hand and the Seal of said Court this  
21 day of August, 2008  
Kevin Stock, Clerk  
By  Deputy

CERTIFIED COPY



IN THE SUPERIOR COURT  
OF THE STATE OF WASHINGTON  
IN AND FOR PIERCE COUNTY

STATE OF WASHINGTON

Respondent,

v.

RACHEL MARIE VINCENT

Appellant.

NO. 07-1-03846-1

ORDER ON RALJ APPEAL REMAND  
DC# CAUSE #7YC010030CLERK'S ACTION REQUIRED

THIS MATTER having come on regularly before the undersigned Judge of the above-entitled Court as an appeal from District Court No. 7YC010030, on a VERDICT of guilty of one count of VIOLATION OF A NO CONTACT ORDER, RCW 26.50.110(1), in the above-entitled cause, and the Court being fully advised in the premises, now, therefore,

It is hereby ORDERED, ADJUDGED and DECREED:

1. The finding of guilt [ ] by the trial court [ ] by jury trial is [ ] affirmed [x] denied, and this cause is remanded for

[ ] imposition of sentence [x] dismissal of the charge.

2. The reason for this Court's rulings is.

The Court of Appeals, Division II issued an opinion in *State v. Hogan*, COA case number 35534-5-II. The court ruled that RCW 26.50.110(1) only criminalized violations "for which an arrest is required under RCW 10.31.100(2)(a)." Defendant's act in this case, like

ORDER ON RALJ APPEAL  
Vincent Remand Order.doc  
Page 1

Office of Prosecuting Attorney  
930 Tacoma Avenue South, Room 946  
Tacoma, Washington 98402-2171  
Main Office: (253) 798-7400  
Prosecuting Attorney  
930 Tacoma Avenue S, Room 946  
Tacoma, Washington 98402-2171  
Telephone: (253) 798-7400

the act in *Hogan*, was not an act where an arrest was required. As such, the court found that Hogan's act did not constitute a crime. Based on the court's ruling, defendant's act in the instant case would not constitute a crime.

3. The conviction is reversed and the case is remanded back to the trial court for dismissal.

DONE IN OPEN COURT this 11<sup>th</sup> day of July, 2008

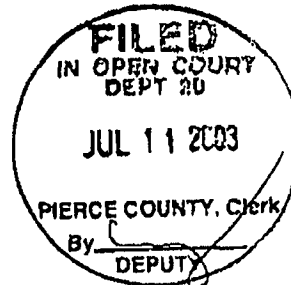
JUDGE

Kitty-Ann van Doorninck

Presented by:  
GERALD A. HORNE  
Pierce County  
Prosecuting Attorney

Melody M. Erick  
MELODY M. ERICK  
Deputy Prosecuting Attorney  
WSB # 35453

Steven P. Johnson Jr.  
STEVEN P. JOHNSON JR.  
Rule 9 Intern  
ID# 9106982



Telephonically approved  
DEFENDANT/DEFENSE ATTORNEY  
WSB# 29374

STATE OF WASHINGTON, County of Pierce  
ss: I, Kevin Stock, Clerk of the above  
entitled Court, do hereby certify that this  
foregoing instrument is a true and correct  
copy of the original now on file in my office.  
IN WITNESS WHEREOF, I hereunto set my  
hand and the Seal of said Court this

21 day of July, 2008  
Kevin Stock, Clerk  
By [Signature] Deputy

ORDER ON RALJ APPEAL  
Vincent Remand Order.doc  
Page 2

Office of Prosecuting Attorney  
930 Tacoma Avenue South, Room 946  
Tacoma, Washington 98402-2171  
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Tacoma, Washington 98402-2171  
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